

**Notice of Class Action Settlement Agreement**

*Frank Treadway, Joey Clark Hatfield, Charles W. Hensley, et al., v.*

*Bluestone Coal Corp., et al.,*

Case No. 5:16-cv-12149

United States District Court for the Southern District of West Virginia

A class action lawsuit is currently pending in the U.S. District Court for the Southern District of West Virginia, Case No. 5:16-cv-12149. The named plaintiffs in this action are Frank G. Treadway, Joey Clark Hatfield and Charles W. Hensley. These Plaintiffs all worked for one or more of the Defendants at the Burke Mountain Strip Mine in Wyoming and McDowell Counties, West Virginia. Plaintiffs allege that from December 27, 2011 through March 26, 2012, Mechel Bluestone and/or Bluestone Coal Corporation (“Defendants”) laid off nearly 100 of their employees, including the Plaintiffs, without giving these employees advanced notice of their layoffs as required by the Worker Adjustment and Retraining Notification (“WARN”) Act. The Defendants deny these allegations.

The Court has ordered that the class action may go forward against Mechel Bluestone, Inc., Bluestone Industries, Inc. and Bluestone Coal Corp. The class is defined as:

All persons who were terminated from full-time employment, or were subject to a reduction in force as full-time employees, at the Burke Mountain Strip Mine by the Bluestone Coal Corporation, Bluestone Industries, Inc., or Mechel Bluestone, Inc., from December 27, 2011 through March 26, 2012.

**The Parties in the case listed above have reached a settlement, setting aside \$703,800.00 to pay equal awards to each class member in three installments. This settlement must be approved by the Court before it is distributed. This Notice informs you of your rights to claim an award under that settlement, or to decline the award by opting out of the settlement. Please read it carefully.**

The Court has authorized this Notice of the Settlement reached by the Parties in the class action lawsuit that is currently pending in the U.S. District Court for the Southern District of West Virginia, Case No. 5:16-cv-12149. A Final Settlement Hearing is set for \_\_\_\_\_ on \_\_\_\_\_ at the federal court house in Beckley, West Virginia.

The purpose of this notice is to explain the nature of the lawsuit and to inform you of your legal rights. If you have any questions, contact Sam Petsonk with the Workers’ Rights Program at Mountain State Justice in Beckley: (681) 207-7510.

**A. THE NATURE AND COURSE OF PROCEEDINGS.**

This lawsuit sought to recover a penalty under the WARN Act, equal to sixty days of wages and benefits, because the Defendants allegedly failed to provide the two months of advanced notice prior to terminating or reducing the workforce, including you, at the Burke

Mountain Strip Mine from December 27, 2011 through March 26, 2012, allegedly in violation of the WARN Act.

On December 14, 2016, Mountain State Justice filed this lawsuit on behalf of Frank Treadway, Joey Clark Hatfield, and Charles W. Hensley, seeking to recover damages under the WARN Act for all Coal Mountain miners. On January 27, 2017, the Defendants filed a Motion to Dismiss, arguing that the claim was subject to a two-year statute of limitations. Mountain State Justice opposed that Motion, and argued for a five-year statute of limitations. On May 22, 2017, the Court denied the Motion to Dismiss and found that the claim was subject to a five-year statute of limitations and thus could go forward towards trial. On March 5, 2018, the Court certified the case as a class action. On April 23, 2018, the Parties reached a Mediation Agreement to resolve this litigation, providing \$782,000.00 as a common fund for the miners who were laid off from full-time employment at the specified sites on Burke Mountain from December 27, 2011 through March 26, 2012.

The Court has not rendered judgment on the claims in the case.

## **B. THE PROPOSED SETTLEMENT.**

(1) **Relief:** The details of the proposed settlement are set forth in the attached document labeled “Mediated Settlement Agreement.” **If you would like to claim an award in this case, you must contact the class counsel, Mountain State Justice, Inc., 223 Prince Street, Beckley, WV 25801, (681) 207-7510.** The attorneys at Mountain State Justice represent the class---that is, **they represent you and not Bluestone.**

(a) The awards to each miner will range from \$7,408.42 (if there are ninety-five verified class members) up to \$8,183.72 (if there are only eighty-six verified class members). The class counsel will determine the number of verified class members based on the responses to this Notice, and will cross-reference those responses with the payroll records to verify the class members. These amounts are to be paid by the Defendants to class counsel, who will hold the payments in trust, verify the sufficiency of the funds, and issue checks to individual class members.

(b) The Defendants will enter a Judgment Order for the amounts that they have to pay under this settlement. The Defendants agree to pay in three equal installments by no later than: September 30, 2018, December 30, 2018, and October 23, 2019. The Defendants agree to pay a penalty of One Thousand Dollars (\$1,000.00) per day for each day that they are late in making payment to the class counsel, with the right of a fifteen (15) day grace period. Should a payment be late and not cured within 15 days of the due date, then the penalty of One Thousand Dollars (\$1,000.00) will be retroactive to the original due date of the payment.

(c) The class counsel will receive attorney’s fees equal to \$78,200.00, which is equal to ten percent of the overall common fund for the class, to compensate Mountain State Justice for having filed the lawsuit and fought for the Burke Mountain miners to receive payment under the WARN Act.

(d) The class representatives will receive a payment of ten thousand dollars each (\$10,000.00) for serving as class representatives, gathering critical evidence that was necessary

in order to prevail on the motion for class certification, attending meetings and hearings, maintaining records, and advocating for the class throughout this litigation.

(e) Mountain State Justice, Inc., the class counsel, will receive thirty thousand dollars (\$30,000.00) to administer the class action settlement---that is, to verify the class members, to manage the claims process, and distribute the checks.

(f) Any unclaimed portion of the settlement proceeds will be distributed to a charitable or public program in McDowell County, West Virginia.

Class counsel and the class representative consider the settlement to be in the best interest of the class because it represents roughly the straight-time damages to which the miners would be entitled if they tried the case and won, and it avoids the delay of additional litigation.

(2) **Hearing:** The court will hold a fairness hearing which will take place at \_\_\_\_\_ **in Beckley, West Virginia.** Any class member may attend the fairness hearing, but you do not need to attend the hearing in order to receive the settlement.

(6) **Release:** If you accept a settlement, you as a class member will release and forever dismiss ("Release") all of the claims under the WARN Act arising from the 2011-2012 layoff that the Plaintiffs asserted in their Complaint against Bluestone Coal Corp., Bluestone Industries, Inc., and Mechel Bluestone, Inc.

### **C. YOUR CHOICES:**

(1) **Accept the settlement.** If you have not already done so, contact Mountain State Justice, Inc., (681) 207-7510, in order to confirm your contact information and verify that you were laid off from Burke Mountain during the specified period. After the Final Settlement Hearing, you will receive instructions on claiming your award under the settlement.

OR

(2) **Object to the settlement.** If you choose to object to the settlement, you must submit your objection in writing to the Clerk of the Court, U.S. District Court for the Southern District of West Virginia, P.O. Drawer 5009, Beckley, West Virginia 25801 **on or before** \_\_\_\_\_. Any class member who has filed an objection with the Clerk may appear at the fairness hearing and be heard (individually or through his/her own counsel).

This is a description of the case in general and does not cover all of the issues in detail. You may review the pleadings and all other documents in this case at the office of the Clerk of the Court, who will make the file available to you for inspection and copying at your expense.

### **D. WHAT TO DO NOW TO PARTICIPATE IN THE SETTLEMENT.**

(1) **If you have not done so, call Mountain State Justice (Sam Petsonk) at (681) 207-7510.** Make sure that your correct address is on file. If this notice was sent to the wrong

address, you should immediately send a letter to Mountain State Justice at the address below stating your correct home address. The attorneys at Mountain State Justice represent the class. You are not required to attend the Court proceedings or retain your own lawyer. But, if you want your own lawyer to speak or appear in Court, separate from Mountain State Justice, you can retain a lawyer for that purpose to enter an appearance in the case, and at your own expense.

(2) If the Court approves the settlement, you will receive a final notice stating the number of class members, the specific amount that you will receive, the timetable for receiving payments, and the process for claiming your payments.

(3) If you have any other questions, you may consult with class counsel, Sam Petsonk or Bren Pomponio, at (681) 207-7510, or by mail at Coal Mountain Class Settlement, Mountain State Justice, Inc., 223 Prince Street, Beckley, WV 25801.

**(4) DO NOT ADDRESS QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR TO THE JUDGE.**

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(681) 207-7510  
*Class counsel*